

Planning and Assessment

Gateway determination report

LGA	Hornsby
PPA	Hornsby Shire Council
NAME	Local Heritage Listing of 22 trees
NUMBER	PP_2019_HORNS_001_00
LEP TO BE AMENDED	Hornsby Local Environmental Plan 2013
ADDRESS	62 Manor Road, Hornsby
DESCRIPTION	Proposed heritage listing of 22 trees
RECEIVED	4 September 2019
FILE NO.	IRF19/6230
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

1. INTRODUCTION

1.1 Description of planning proposal

The planning proposal relates to the site at 62 Manor Road, Hornsby and seeks to amend schedule 5 of *Hornsby Local Environmental Plan 2013* (HLEP 2013) to include 22 trees as items of local heritage significance.

1.2 Site description

The site is legally described as Lot 3 in DP 524288 and is a battle-axe lot with an area of 1.083 hectares. The site has an access handle length of 38 metres and frontage of 12.2 metres to the north west of Manor Road (**Figure 1**). Two single storey detached dwellings are located on the site. The site slopes steeply from its road frontage to the rear of the site. The site is heavily vegetated with natural bushland forest and adjoins the Berowra Valley National Park to the rear (**Figure 2**).

The site is identified as including Blackbutt Gully Forest which corresponds to the Smooth-barked Apple-Turpentine-Blackbutt tall open forest community. This community is not listed as a threatened ecological community under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) or the *Biodiversity Conservation Act 2016* (BC Act). No threatened flora species were recorded on the site; however, Ecoplaning indicated there was moderate likelihood of that *Tetrahteca glandulosa* occurring on the site (**Attachment I**).



Figure 1: Site aerial 62 Manor Road, Hornsby (Source NearMap).



Figure 2: Site entry - 62 Manor Road, Hornsby (Google StreetView).

1.3 Existing planning controls

Under *Hornsby Local Environmental Plan 2013* (HELP 2013) the front half of the site towards Manor Road is zoned R2 *Low Density Residential*, with the rear half zoned RE1 *Public Recreation* (**Figure 3**).

The RE1 portion of land is identified on Council's LEP acquisition mapping, with this land also containing 9 of the 22 trees that are proposed to be listed as having heritage significance (**Figure 4**). The R2 zoned land has a prescribed height of building of 8.5 metres. The R2 zoned portion of the site has a minimum allotment size requirement of 500m². This site is not identified under clause 6.4 as being land that is required to maintain terrestrial biodiversity (**Figure 5**).

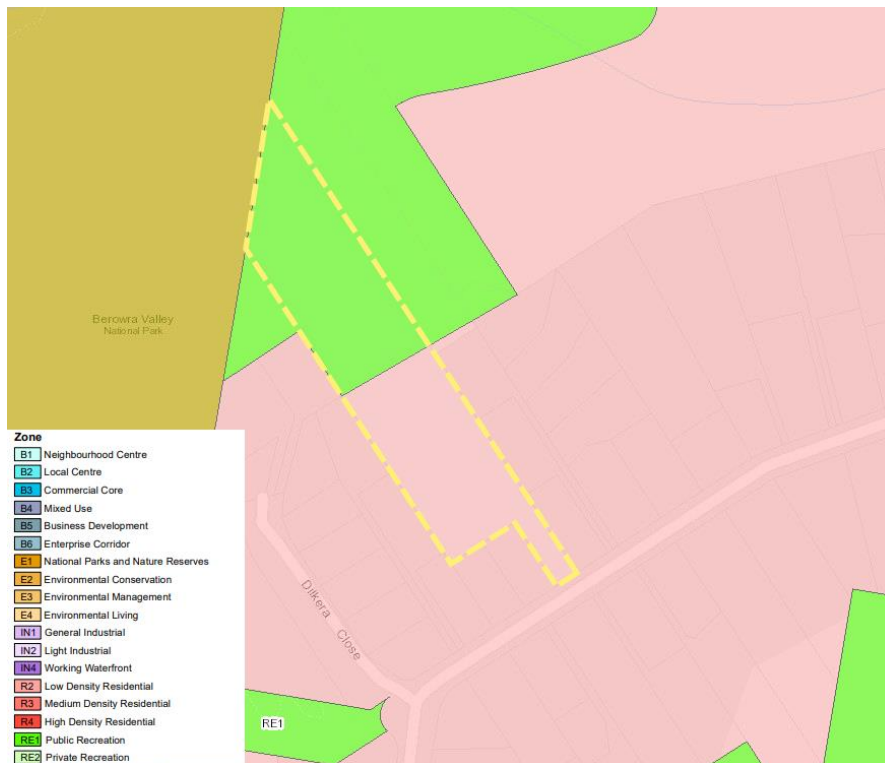


Figure 3: Existing Land Zone under Hornsby LEP 2013 – zoned R2 and RE1.



Figure 4: Current Land Reservation Acquisition Mapping (Hornsby LEP 2013).



Figure 5: Terrestrial Biodiversity Mapping (HLEP 2013).

1.4 Surrounding area

The surrounding area comprises residential lots either side of Manor Road, most being much smaller in site area than the subject site (**Figure 5**). The RE1 land on the site is one of only two lots of this public bushland yet to be acquired and adjoins Berowra Valley National Park (**See Figure 4**).

The site is in proximity to numerous heritage items of local significance, as well as Hornsby Rifle Range to the north-east and Hornsby Quarry to the south-east. Manor Road is listed as a local heritage item (landscape) that extends from the intersection at Watson Avenue to the end of the road at 77 Manor Road, Hornsby (**Figure 7**). The street is lined with mature trees of various heights that integrate with an established residential setting. Generally, the trees found on the site are similar to that of the surrounding area, of Manor Road, and are not considered unique to the site. Images of the street are at **figures 7-10 below**.

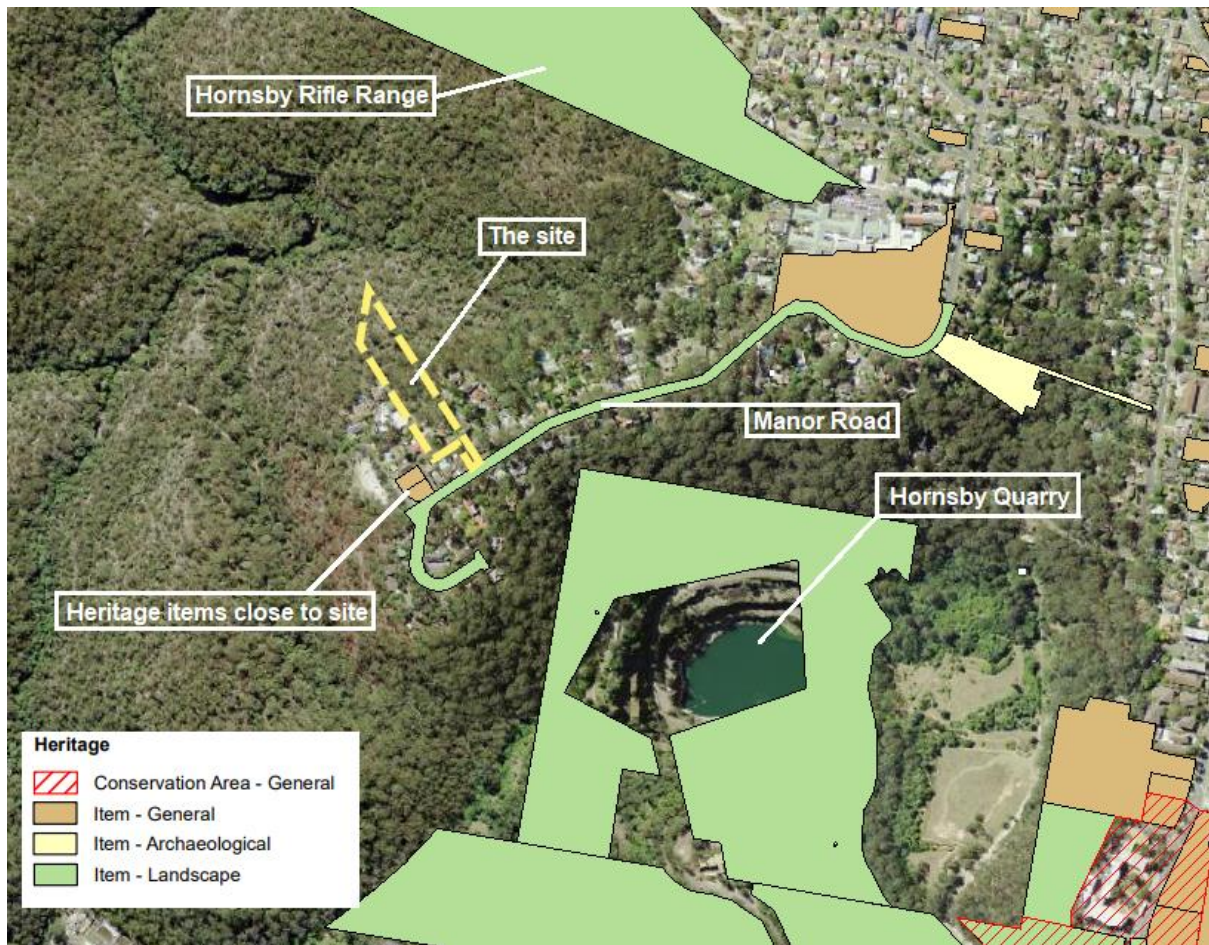


Figure 6: Surrounding area and heritage information.



Figure 7: Looking north-east from the entrance of 62 Manor Road. (Google Streetview)



Figure 8: Looking south-west from the entrance of 62 Manor Road. (Google Streetview).



Figure 9: Looking south-west down Manor Road in the vicinity of the Mt Wilga Private Rehabilitation Hospital. (Google Streetview)



Figure 10: Looking north-east along Manor Road. (Google Streetview)

1.5 Background and development application (DA/151/2018)

Development application

- **23 February 2018** - DA/151/2018 lodged with Council for demolition of existing structures and community title subdivision of the site into 7 residential lots greater than 500m² in site area, on residual lot (land zoned RE1) and one community lot for the proposed right of way access (**Figure 6**).
- **8 May 2018** – A Class 1 Application was filed with the Land and Environment Court appealing the deemed refusal of the DA.
- **12 November 2018** – The parties participated in a Section 34 conference before a Commissioner of the Land and Environment Court (L&E Court). The matter was not resolved and the s34 conference was terminated.
- **14 November 2018** - Council considered a Mayoral Minute and resolved to place an Interim Heritage Order (IHO) on the site to allow a proper assessment of the heritage significance of the vegetation on the site (**Attachment F**).
- **8 May 2019** – Council considered the findings of the Landscape Heritage Assessment prepared by Time Heritage Landscapes in association with Richard Lamb and Associates (**Attachment G**) and resolved to prepare a planning proposal to list 22 trees located on the site. At the same meeting, a separate confidential report was presented which provided an update of the appeal – of the development application – and associated legal advice. Council subsequently resolved to remove the IHO (**Attachment H**).
- **16-18 December 2019** – L&E Court hearing, in response to the applicant's 8 May 2018 Class 1 Application.
- **07 February 2020** – The L&E Court upheld the appeal and granted consent to DA/151/2018 for demolition, tree removal and community title subdivision of

existing Lot 3 DP524288 into 6 lots and new building work to the retained dwelling subject to conditions (**Attachment Consent**).

The consent included that the following trees were approved for removal: 9, 10, 13, 14, 15, 17, 17.1, 18, 19, 23, 24, 25, 33, 35, 36, 37, 38, 39, 41, 44, 47, 49, 53, 54, 55 and 65 as identified on the updated Aboricultural Impact Assessment prepared by Footprint Green.

- Of particular relevance to this Planning Proposal, is that three of the above trees given consent to be removed as part of the development application, are trees that have been proposed to be heritage listed in this Planning Proposal. These trees are numbered 18, 24 and 41 as identified on Figure 12 of this report.

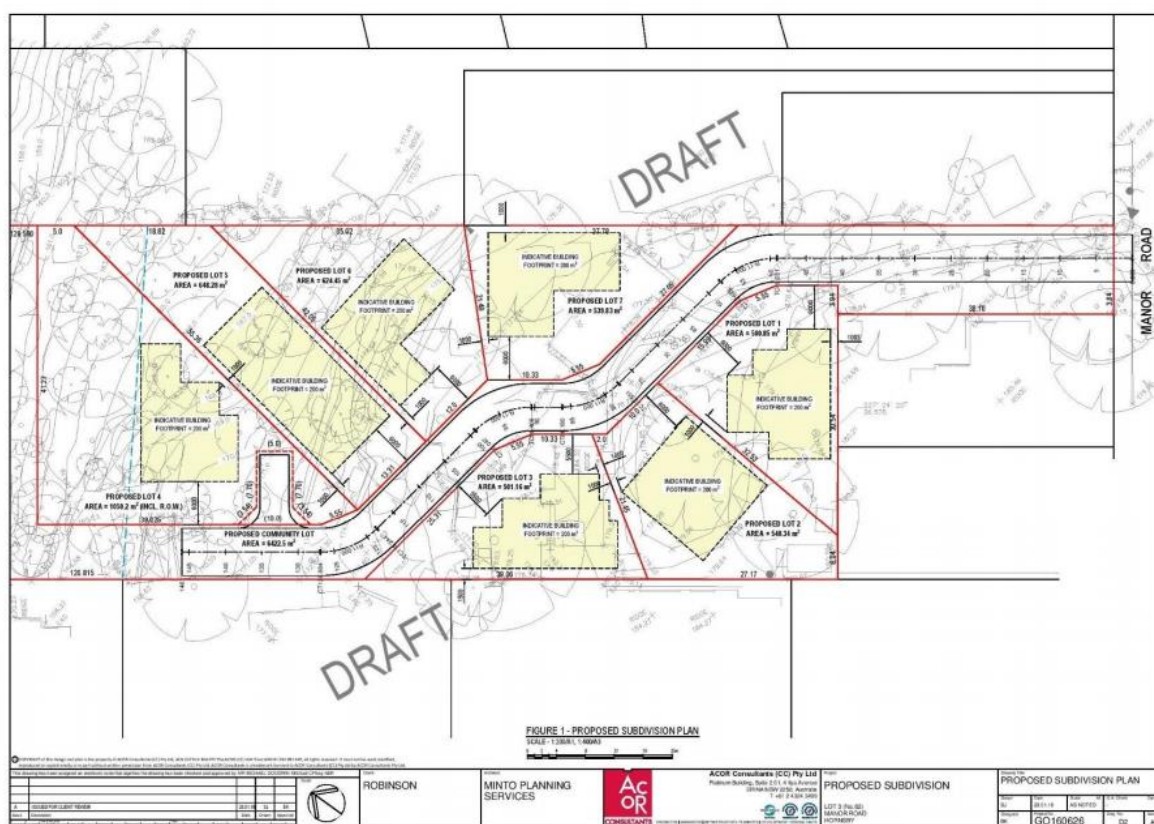


Figure 11: Subdivision site plan for DA/151/2018, noting the blue dotted line (left side) being the approximate line of future land acquisition by Hornsby Council.

Local Planning Panel

The planning proposal was referred to the Hornsby Local Planning Panel in July 2019, who supported the progression of the planning proposal to the Department as it was not inconsistent with Council's comprehensive heritage review approach. (**Attachment G**).

2. PROPOSAL

2.1 Objectives or intended outcomes

The objective of the proposal is to amend Schedule 5 of HELP 2013 to list 22 trees on the site as items of local heritage significance. The intended outcome is to provide recognition of the heritage significance of the trees.

2.2 Explanation of provisions

The LEP is proposed to insert the listing for the 22 trees into Schedule 5 of the LEP in the following way:

Table 1: Amendment to Schedule 5 of Hornsby LEP 2013.

Suburb	Item name	Address	Property description	Significance	Item no.
Hornsby	Particular trees	62 Manor Road	Lot 3 DP 524288	Local	834

The location of the 22 trees is indicated below in **Figure 12**. Nine of the trees proposed to be listed are in the southern portion of the site zoned R2 Low Density Residential. The remaining 13 trees are located in the RE1 Public Recreation zoned portion of the site.

The development application for subdivision proposed to remove 12 trees that are also proposed to be listed as part of this planning proposal. The reasons for removal are that the trees are either close to or in an indicative dwelling footprint or to be removed to accommodate the proposed access handle for the proposed lots.

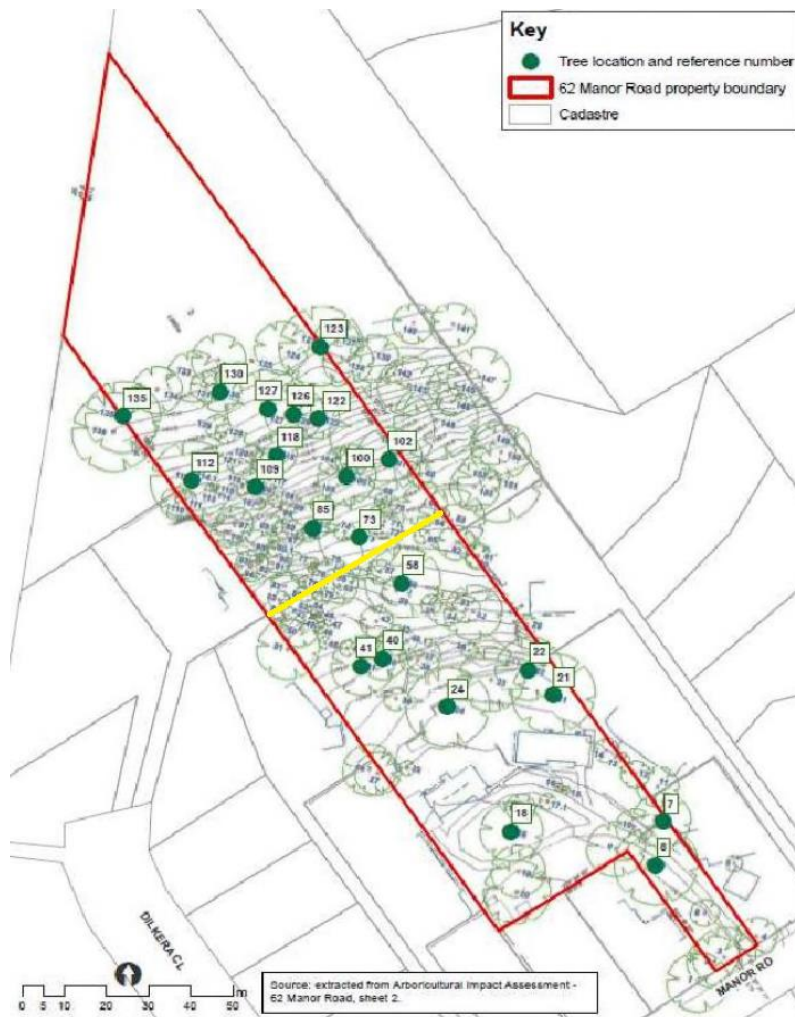


Figure 12: Trees proposed to be listed - the yellow line represents the approximate zone boundary between the RE1 and R2 zoned areas of the site

Consent has been granted to DA/151/2018 and involves the removal of trees. Specifically, an updated Arboricultural Impact Assessment by Footprint Green now identifies Tree No. 18, 24 and 41 to be removed. The Department is relying on an older version of the assessment by Footprint Green, however this has no impact on the planning proposal to list the trees.

2.3 Mapping

The proposal will amend and replace the Heritage Map (HER_017B), to identify the site as containing specific items of local heritage significance (**Figure 8**).



Figure 13: Proposed heritage mapping (HER_017B).

3. NEED FOR THE PLANNING PROPOSAL

The planning proposal states that the need for the proposed heritage listing is a result of the recommendations of a Landscape Heritage Assessment prepared by Time Heritage Landscapes, in association with Richard Lamb and Associates (**Attachment G**). The report estimates that 22 individual tree specimens on the subject site, from the Blackbutt Gully Forest vegetation community, are potentially over 100 years old and with some likely to be over 200 years old and some considered to predate European settlement of the area.

The Landscape Heritage Assessment, commissioned by Hornsby Council, relies on base information from the Arboricultural Impact Assessment prepared by Footprint Green (**Attachment J**) and a Flora and Fauna Assessment prepared by Ecoplanning (**Attachment K**); both of which were submitted in support of the development application DA/151/2018 as detailed in Part 1.5, above.

The two reports identify the species, height, trunk width and general size of the trees on the subject site. Based on this information, the age of 22 of the trees are estimated to be over 100 years old and with some likely to be over 200 years old.

As a result, the report concludes with the claim that the 22 individual trees satisfy Criterion F of the NSW State Heritage Criteria – *Possessing uncommon, rare or endangered aspects of NSW's cultural or natural history*.

Hornsby Shire Council is aiming to preserve this landscape heritage by listing 22 specific trees as items of local significance in the Hornsby LEP 2013. Council has indicated that a planning proposal is the only means to alter Schedule 5 of the HLEP 2013 to potentially list the trees for heritage significance.

Department comment

The Department notes that standard approach to protecting items of local heritage value would be to include item(s) in Schedule 5 of Hornsby LEP as listed heritage items. However, the planning proposal does not provide sufficient evidence to list the trees as heritage significant to enable specific heritage protection through the heritage provisions under an LEP. This is discussed further in Part 5.3, below.

4. STRATEGIC ASSESSMENT

4.1 North District Plan

The North District Plan operates to give effect to the regional plan. The North District Plan encompasses the Hornsby Local Government Area.

The planning proposal is consistent with the outcomes and direction in the plan, however of particular relevance are those associated with heritage and landscape outcomes, see Table 2 below.

Table 2 – Consistency with Planning Priorities from the North District Plan

Planning Priority	Action	Objective	Comments
Planning Priority N6 –		Creating and renewing great places and local centres, and respecting the District's heritage	
	Action 21	<p><i>Identify, conserve and enhance environmental heritage by:</i></p> <p><i>a. engaging with the community early in the planning process to understand heritage values and how they contribute to the significance of the place</i></p> <p><i>b. applying adaptive re-use and interpreting of heritage to foster distinctive local places</i></p> <p><i>c. managing and monitoring the cumulative impact of development on the heritage values and character of places.</i></p>	The planning proposal is generally consistent with the intent of this Action, as it is proposing to identify the 22 trees as having local heritage significance. However, the proposal is recommended not to proceed as the heritage listings are not justified, as discussed throughout this report.
Planning Priority N16		Protecting and enhancing bushland and biodiversity	
	Action 66	<p><i>Protect and enhance bushland and biodiversity by:</i></p> <p><i>a. support landscape-scale biodiversity conservation and the restoration of bushland corridors</i></p> <p><i>b. Managing urban bushland and remnant vegetation as green infrastructure</i></p> <p><i>c. Managing urban development and urban bushland to reduce edge-effect impacts</i></p>	The proposal is generally consistent with this Action, although the intent is ultimately just specific the protection of trees through heritage listings. However, the protection of these trees is more appropriate through other policy and legislation as discussed in section 4.5 of this report.
Planning Priority N17		Protecting and enhancing scenic and cultural landscapes	
	Action 67	<i>Identify and protect scenic and cultural landscapes</i>	The proposal is generally consistent with this Action as it is looking to identify and protect 22 trees on the site as local heritage items, however the report does not provide enough definitive evidence, and Council would be better placed to use existing ecological/vegetation protection measures, as

Planning Priority	Action	Objective	Comments
			discussed in section 4.5 of this report.
Planning Priority N19		Increasing urban tree canopy cover and delivering Green Grid connections	
	Action 71	<i>Expand urban tree canopy in the public realm</i>	The proposal aims to assist (subject to the future acquisition by Council) protection of urban tree canopy in the public realm, and also aims to retain heritage tree canopy on the portion of the site to be retained in private ownership. Despite this; other legislation can achieve the intended outcome and is explained in section 4.5 of this report.

4.3 Local

Community Strategic Plan (CSP)

Hornsby Shire's CSP 2018-2028 was adopted by Council on 13 June 2018. Of particular relevance to this proposal are the actions and directions that focus on heritage and the existing natural landscapes of the shire. Specifically;

- Appreciate the heritage and character of the area
- Valuing green spaces and landscape

The proposal to list 22 trees as landscape heritage items is consistent with Hornsby Shire's CSP, as the intention is to protect the trees on the site. The intention to provide a further layer of protection for the 22 trees is Council acting on CSP by valuing green spaces and landscape and attempting to appreciate heritage.

However, the Department does not consider there is sufficient evidence to justify the trees to be of heritage significance and Council may be better placed to use existing ecological/vegetation protection measures as explained in **section 4.5** of this report.

Hornsby Draft Local Strategic Planning Statement (LSPS)

The planning proposal highlights three priorities from the Hornsby draft LSPS that the planning proposal intends to meet, being:

- *Liveable Priority LP5 – Protecting, conserving and promoting our natural, built and cultural heritage*
- *Sustainability Priority DP1 – Improving the overall health of our natural environment and ecosystem*
- *Sustainability Priority SP2 – Protecting and increasing the extent and quality of natural areas*

Hornsby's draft LSPS also identifies that a key priority for the LGA is the conservation and celebration of heritage, including the preparation of a comprehensive heritage

study, gap analysis and action plan. The LSPS identifies through its 'Liveable Action to:

- LA10 - *Undertake the tasks to complete Hornsby Comprehensive Heritage Study*

The LSPS indicates that the comprehensive heritage study, which is expected to commence in 2020, will involve progressing the key findings and recommendations from the *Hornsby Heritage Action Plan 2019* including undertaking further background studies on landscape heritage. In general, this review will provide a more strategic and appropriate process for investigating and reviewing potential new heritage listings, such as potential tree listings as opposed to considering site specific heritage listings through a planning proposal, such as this example.

4.4 Section 9.1 Ministerial Directions

All Ministerial Directions either do not apply or are not relevant to this situation, with the exception of the following:

Direction 2.3 – Heritage Conservation

This Direction applies to planning proposals that facilitate the conservation of environmental heritage significance.

The Department believes that proposal is inconsistent with this Direction as the proposal does not provide evidence to suggest that the trees are rare, unique or culturally significant enough to support identifying the trees for heritage conservation through a local listing.

An assessment of this is shown in section 5.3 of this report.

4.5 State environmental planning policies (SEPPs)

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The aim of this policy is to protect biodiversity values and preserve the amenity of non-rural areas of the State through the preservation of trees, including where vegetation is subject to the Biodiversity Offset Scheme. The SEPP regulates the protections and clearing of native vegetation on urban land and requires a landowner/proponent to obtain a permit from Council if vegetation is proposed to be removed, unless any of the listed exclusions apply.

Section 1B.6.2 Vegetation Preservation of Council's DCP incorporates the application of this SEPP. The SEPP adds an extra level of protection and consideration for trees/vegetation in non-urban areas, such as for the subject site. Therefore, the SEPP already provides an alternative approach, to the heritage listing of trees, in protecting the subject trees through the assessment process associated with any tree removal application or development application, where trees are proposed to be removed.

State Environmental Planning Policy No. 19 – Bushland in Urban Areas

The aim of this policy is to protect and preserve bushland within urban areas. The SEPP specifically protects trees on the RE1 zoned land through Clause 6 – *Consent to disturb bushland zoned or reserved for public open space purposes*. The SEPP lists the exclusions where disturbance of bushland can occur without consent and lists the specific matters the consent authority must consider before issuing consent to carry out development that disturbs bushland that is zoned or reserved for public open space.

This SEPP therefore offers a level of protection for the trees within the RE1 Public Recreation zoned section of the subject site. The intent of the proposal is generally consistent with this SEPP, as it aims to protect nine (9) trees within the RE1 zoned section of the site, although proposed through a different mechanism ie. heritage listing.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 – NSW Housing Code

The proposal to list the trees as items of landscape heritage significance would ensure that any development on the site would be lodged and assessed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* as Complying development would no longer being applicable.

Council's Tree Preservation Policy in Hornsby Development Control Plan

Section 1B.6 'Tree and Vegetation Preservation' and Section 1B.6.2 'Vegetation Preservation' of the DCP contain provisions concerning tree and vegetation protection. Trees are afforded protection in accordance with the Vegetation in Non-Rural Areas SEPP (above) and where trees are heritage listed through Clause 5.10 (Heritage Conservation) of the Hornsby LEP, except for trees on the exempt tree species list.

None of the trees to be listed in the proposal are identified within Council's exempt tree species list, therefore ensuring a development application or tree removal application would be required to consider the protection of trees against Council's DCP.

5. SITE-SPECIFIC ASSESSMENT

5.1 Social

The proposal is not anticipated to have any negative social impacts.

5.2 Environmental

The proposal is to list 22 trees on the site as heritage items of local significance. If made, the listing will provide an additional layer of protection for any proposed development to address the impact it will have on the trees. Given the connection to the Berowra Valley National Park, the site presents an opportunity for wildlife habitats to exist that may be threatened.

Council is looking to protect the natural environment through the endorsement and preparation of this planning proposal, however other means of protection already exist for trees and vegetation, including

- State Environmental Planning Policy (Vegetation in non-rural areas) 2017, and subsequent Tree Preservation provisions in Hornsby Development Control Plan.
- State Environmental Planning Policy No 19 (Bushland in Urban Areas) – which protects trees located in the RE1 zone of the subject site.

Further information on how the above means of protection are contained in Section 5.3, below.

5.3 Heritage assessment

The Landscape Heritage Assessment was prepared by Time Heritage Landscapes, in association with Richard Lamb and Associates (**Attachment G**).

The Department recognises that the limitations of the assessment extend to the following:

- Consultants did not directly access 62 Manor Road to undertake an on-site assessment; and
- The assessment relies upon data from the:
 - o Flora and Fauna Assessment (prepared by Ecoplaning – February 2018); and
 - o Aboricultural Impact Assessment (prepared by Footprint Green – February 2018).
- These two assessments formed part of the development application (DA/151/2018) submitted to Council, which is now before the Land and Environment Court.

The assessment begins with a historical context of the general area, including subdivision patterns, land ownership and other heritage items in the vicinity of the site.

Part 2.2 of the assessment details more specific development and subdivision patterns, including images of subdivision plans showing the site and photos of Manor Road with subdivision notices for the Mt Wilga Estate (the subdivision that created the current form of the site in 1928).

The Landscape Heritage Assessment recognises that the field assessment identified vegetation in the study area to be consistent with Blackbutt Gully Forest community, which is mapped extensively – through Council vegetation mapping – to the north and south of the site. Hornsby Shire Council identified Blackbutt Gully Forest as a locally significant ecological community. The trees proposed to be listed include Blackbutt, Turpentine (which is adequately conserved as a single species, however vegetation communities on shale derived soils in which Turpentine occurs readily are highly threatened), Sydney Red Gum, Red Mahogany, Red Bloodwood and Sydney Peppermint. A list of the trees subject to the proposal is below in Table 3 The development application (DA/151/2018) was given development consent 7 February 2020. Three trees from this planning proposal, namely trees 18, 24 and 41 as shown in **Figure 12**, have been approved to be removed. :

Table 3 – Details of tree proposed to be heritage listed

Trees # (from Figure 7)	Genus Species	Development application proposed removal or retention (rationale)	Land zoning	Approved to be removed under DA/151/2018	Type	Height (m)
7	<i>Syncarpia glomulifera</i>	Removal (access)	R2		Turpentine	14
8	<i>Eucalyptus pilularis</i>	Removal (access)	R2		Blackbutt	25
18	<i>Angophora costata</i>	Removal (indicative dwelling)	R2	✓	Sydney Red Gum	15

Trees # (from Figure 7)	Genus Species	Development application proposed removal or retention (rationale)	Land zoning	Approved to be removed under DA/151/2018	Type	Height (m)
21	<i>Eucalyptus pilularis</i>	Removal (indicative dwelling)	R2		Blackbutt	25
22	<i>Eucalyptus pilularis</i>	Removal	R2		Blackbutt	18
24	<i>Eucalyptus pilularis</i>	Removal	R2	✓	Blackbutt	16
40	<i>Eucalyptus resinifera</i>	Removal	R2		Red Mahogany	16
41	<i>Eucalyptus resinifera</i>	Removal (access)	R2	✓	Red Mahogany	17
58	<i>Eucalyptus resinifera</i>	Removal (indicative dwelling)	R2		Red Mahogany	20
73	<i>Corymbia gummifera</i>	Retention	RE1		Red Bloodwood	22
85	<i>Eucalyptus piperita</i>	Removal	RE1		Sydney Peppermint	14
100	<i>Eucalyptus pilularis</i>	Retention	RE1		Blackbutt	20
102	<i>Eucalyptus pilularis</i>	Retained	RE1		Blackbutt	22
109	<i>Eucalyptus piperita</i>	Removal	RE1		Sydney Peppermint	16
112	<i>Eucalyptus pilularis</i>	Retention	RE1		Blackbutt	25
118	<i>Eucalyptus piperita</i>	Removal	RE1		Sydney Peppermint	12
122	<i>Syncarpia glomulifera</i>	Retention	RE1		Turpentine	20
123	<i>Eucalyptus pilularis</i>	Retention	RE1		Blackbutt	24
126	<i>Eucalyptus pilularis</i>	Retention	RE1		Blackbutt	22
127	<i>Eucalyptus pilularis</i>	Retention	RE1		Blackbutt	25
130	<i>Syncarpia glomulifera</i>	Removal	RE1		Turpentine	17
135	<i>Eucalyptus pilularis</i>	Retention	RE1		Blackbutt	25

Preparation of the Landscape Heritage Assessment did not involve an on-site inspection but relied on the assessment (i.e. height, canopy, diameter breast height, trunk diameter above the root buttress) provided in the Arboricultural Impact Assessment (that supported DA/151/2018). This information was used in the Landscape Heritage Assessment to determine the estimated age of the trees and provided the basis supporting the claim that the above trees should be listed as landscape heritage items on the basis of satisfying criterion (f) of the NSW Heritage System Criteria.

The reliance on secondary sources to inform this assessment creates some ambiguity in terms of the heritage assessment, as a site inspection by the consultant is seen as a more thorough approach to support a heritage assessment.

The Hornsby Local Planning Panel considered this matter on 21 July 2019 and advised that it supported the preparation of the planning proposal to list the 22 trees on the site as local heritage items.

It is to be noted that the Local Planning Panel Minutes (**Attachment G**) indicate that *“One Panel member formed the opinion that a planning proposal is not the appropriate mechanism to manage bushland interface and landscape heritage on the site, as it pre-empted the broader strategic approach”*. ,..

Department Review

The Landscape Heritage Assessment (LHA) identifies that the wider area surrounding the site has a relatively-well documented history in terms of subdivision, land ownership and bushland character that has been maintained for some time. As explained above, the site itself does not contain any vegetation, or distribution of vegetation that can be considered unique.

It is noted that there is no recommendation, claim or evidence in the LHA to suggest the trees are historically significant landscape items based on Criterion a), b), c), d), e), and g) of the NSW Heritage System Criteria, which are outlined below:

- a) *an item is important in the course, or pattern, of NSW's cultural or natural history;*
- b) *an item has strong or special association with the life or works of a person, or group of persons, of importance in NSW's cultural or natural history;*
- c) *an item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW;*
- d) *an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons;*
- e) *an item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history;*
- f) *an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history* Note - a claim based on this criterium is discussed below
- g) *an item is important in demonstrating the principal characteristics of a class of - cultural or natural places; or cultural or natural environments of NSW's - cultural or natural places; or cultural or natural environments;*

The LHA does however claim and attempt to justify that the trees satisfy Criterion (f) of the NSW Heritage System Criteria i.e. - *an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history.*

The justification for this claim as summarised in the LHA is that the trees are “...likely to be over 100 to 200 years old. These specimens are considered likely to predate European settlement and subdivision of the area. Due to their age and size, these trees are considered to have ecological and botanical value and are potentially rare within a residential setting”.

The Landscape Heritage Assessment was prepared without an on-site investigation and relies on the details provided in two separate assessments that supported DA/151/2018, which did not seek to or determine heritage significance of the site or its landscape.

Department Comment

A site visit was undertaken by the Department to understand the level of vegetation from the street, its distribution and density. Department officers did not access the site beyond the driveway along the battle-axe lot handle.

The site driveway contains mature trees with high canopies. The northern portion of the site cannot be seen from the entry at Manor Road due to the slope towards Berowra Valley National Park (**Figure 14, below**).



Figure 14: Entrance to site from Manor Road

The ridgeline of Manor Road has a consistent character along its entirety, with large mature trees lining the street and heavily vegetated yards providing a distinctive residential setting that appears to be in keeping with the natural environment (**Figures 15 and 16, below**).



Figure 15: Looking north-east from the entry to 62 Manor Road.



Figure 16: Looking south-west from the entry to 62 Manor Road.

From the site visit it is clear that there is a consistent landscape character along the ridgeline of Manor Road that extends into most residential lots, connecting through mature trees with extensive canopies and intermixed exotic plants (**Figure 17, below**).



Figure 17: Looking north-east in the mid-section of Manor Road, showing a vegetation distribution and open yards typical of the entire street.

The LHA report in Council's planning proposal contains limited evidence to support the recommendation that the 22 trees have ecological and botanical value and are rare or unique within a residential setting.

The critical issue with regard to criterion (f) is whether the trees are unique and/or are rare. As rarity is a relative value, to establish or support this claim conclusive evidence to this effect would need to be provided, such as by identifying and assessing the species, size, condition and relative age of the subject trees in comparison to a large sample of trees in the adjoining areas and comparable residential bushland interface areas.

Without such evidence, there is not adequate justification to establish that the trees are uncommon or rare. It is possible that there are many trees in the surrounding areas and region from the Blackbutt Gully Forest community in similar residential bushland interface zones that are of similar species mix, age and condition.

Generally, the planning proposal and the LHA suggest that the trees (and the site) contain ecologically sensitive values, and character that should be further examined, outside of the scope of a planning proposal of this nature. This is supported by the Arboricultural Impact Statement (**Attachment H**) which included the assessment of landscape/environmental significance, without linking this to heritage value.

Department request for further information

Department staff contacted Council planning staff on 26 March 2020 to explain that it was unlikely the Proposal would be supported. The Department acknowledged the extensive work undertaken by Council to prepare the proposal, however indicated that the proposal does not contain sufficient evidence to support the claim that the trees are unique or rare in the context of a heritage listing.

As this was preliminary advice, the Department encouraged Hornsby Council to provide further evidence to support the Proposal, specifically in response to the

concerns highlighted above. As a result, the Department delayed any further assessment of the proposal while Council considered its position. A response from Council was given 28 April 2020, and is at **Attachment J**.

The response emphasized:

- The significant public interest in this matter;
- The significant resources Council have dedicated to this matter;
- The Proposal was supported by a Heritage Significance Assessment co-authored by a highly qualified heritage expert;
- The report concluded that the 22 trees possess uncommon, rare or endangered aspects of NSW's cultural or natural history, and subsequently this meets the threshold of criterion (f) of the NSW State Heritage Criteria;
- The report is based on evidence presented in the Arborist Report and Flora and Fauna Report provided with the development application for the site, also prepared by suitably qualified consultants, and are not secondary sources; and
- The Local Planning Panel (LPP) considered the application prior to the submission to the Department for a Gateway determination, and most of the panel members supported the progression of the proposal;

Generally, the response provided further emphasis and clarity concerning the existing evidence provided in the original submission for a Gateway determination.

Council's letter has been carefully considered as part of this assessment report, and found the response has not demonstrated any new evidence in support of the proposal beyond that provided as part of the original Gateway submission to the Department. As a result, the recommendations of this assessment have subsequently not changed, and the Proposal is recommended not to proceed.

Alternatives

Whilst not a specific requirement of this planning proposal, the Department encourages Hornsby Shire Council to explore more suitable avenues of ecological/landscape protection, which may be:

- The Hornsby Shire Council Development Control Plan – Tree Preservation Order;
- State Environmental Planning Policy (Vegetation in non-rural areas) 2017;
- Potential Biodiversity Mapping under Clause 6.4 of Hornsby Local Environmental Plan 2013; and
- Any further local conservation strategies.
- Potential future terrestrial mapping updates
- Potential future local character overlays

The requirements associated with the above legislative and planning controls are likely to be subject to consideration as part of any future development applications for the site or through a tree removal application.

For instance, Turpentine (*Syncarpia glomulifera*) is a dominant tree species of the Turpentine-Ironbark Forest of the Sydney Basin Bioregion, with the Forest community listed as a critically endangered ecological community under the *Environment*

Protection and Biodiversity Conservation (EPBC) Act 1999. The proposal contains three (3) instances of this species to be listed as items of landscape heritage significance. Therefore, any future development applications affecting these trees would need to consider the conservation implications of these endangered species.

Hornsby Local Strategic Planning Statement

It is noted that Hornsby Shire Council has finalised its Local Strategic Planning Statement (LSPS), which details a range of actions that intend to align with the North District Plan.

The LSPS details that a Heritage Action Plan has now been completed, with one of the recommendations being to prepare and update studies on matters including landscape heritage. It is through this study that Hornsby Shire Council may better inform more holistic heritage conservation decisions with respect to landscape heritage and provide more certainty for landowners regarding landscape heritage and character.

5.4 Economic

The proposal may impact future development on the site, specifically the outcome of the active subdivision development application. The listing of the trees would likely restrict the location of future development on the site on the portion of the site zoned *R2 Low Density Residential* and therefore have an economic impact on the site's development potential.

The potential listing of some of the trees as heritage items located on the RE 1 *Public Recreation* zoned land is considered to provide a positive economic outcome, even though any removal of trees in this zone is currently protected through SEPP 19, and all trees are currently protected through Council's tree preservation provisions. This potentially would further ensure that this future public land will contain a high-quality landscape amenity in the public realm.

5.5 Infrastructure

The proposal does not facilitate increased development on the site. There will be no significant demand on infrastructure as a result of this proposal.

6. CONSULTATION

6.1 Community

The planning proposal is not supported to proceed to public exhibition.

6.2 Agencies

The planning proposal is not supported; therefore, no further agency consultation is required.

7. TIME FRAME

There are planning proposal timeframe implications as the proposal is not recommended to proceed.

8. LOCAL PLAN-MAKING AUTHORITY

The proposal is not recommended to proceed.

9. CONCLUSION

The planning proposal is not recommended to proceed as:

- It does not demonstrate that the site contains trees that are of local heritage significance and worthy of listing in the Hornsby Local Environmental Plan 2013;
- It does not provide definitive evidence to support the claim that the 22 trees identified, *“due to their age and size, these trees are considered to have ecological and botanical value and rare within a residential setting”* and therefore does not demonstrate local heritage significance in satisfying Criterion f) of the NSW State Heritage Criteria i.e. ‘an item possesses uncommon, rare or endangered aspects of NSW’s cultural or natural history’;
- It does not claim or attempt to demonstrate that the 22 trees identified are of local heritage significance regarding the other criteria for heritage significance under the NSW State Heritage Criteria i.e. Criterion a), b), c), d), e) and g). For instance, there is no claim that the trees have a strong or special association with the life or works of a person, or group of persons, of importance in NSW’s cultural or natural history (Criteria b);
- There are other existing legislative and planning protection mechanisms, rather than a planning proposal to amend the local heritage listings in HLEP 2013, that would be better suited for the protection of the on-site trees from the impacts of this proposed development, if this is the underlying goal for Hornsby Shire Council and the interests of the local community. For instance, the potential ecological value or significance of these trees could be assessed for possible protection through the Hornsby Development Control Plan 2013, Section 1B Tree and Vegetation Preservation; and
- The key assertion in the Landscape Heritage Assessment that the 22 trees are *“...likely to be over 100 to 200 years old. These specimens are considered likely to predate European settlement and subdivision of the area. Due to their age and size, these trees are considered to have ecological and botanical value and are potentially rare within a residential setting”*, has not been established or supported by evidence that clearly shows rarity. Further evidence, in addition to on-site assessment evidence, would be required to support the claims such as identifying and assessing the species, size, condition and age of the subject trees relative to a large assessment sample of trees in adjoining areas and comparable residential and bushland interfaces. Nothing in the submitted material explains how the trees are rare, rather it shows that the site contains remnant bushland with similar trees of adjoining properties and the Berowra Valley National Park.

Other critical issues to note include:

- The preparation of the Landscape Heritage Assessment did not involve an on-site assessment and instead relied on data from two other reports from DA/151/2018, which had not considered the heritage significance of the trees; and
- The portion of the site zoned R2 *Low Density Residential* contains 9 of the 22 trees proposed for heritage listing and the portion of the site zoned RE1 *Public*

Recreation zoned contain 13 of the trees. Therefore, only 9 of the trees are potentially directly impacted by future development related to DA/151/2018.

10. RECOMMENDATION

It is recommended that the Executive Director, North District, as delegate for the Minister for Planning and Public Spaces, determine that the planning proposal should not proceed for the following reasons:

1. The proposal does not demonstrate that the site contains trees that meet the criteria of local heritage listing in *Hornsby Local Environmental Plan 2013*;
2. The proposal and the supporting Heritage Impact Assessment does not provide evidence to support the specific claim that the 22 trees identified are of 'ecological and botanical value and rare within a residential setting' and does not demonstrate local heritage significance in satisfying Criterion f) of the NSW State Heritage Criteria i.e. 'an item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history';
3. The proposal and the supporting Heritage Impact Assessment does not claim or attempt to demonstrate that the 22 trees identified are of local heritage significance in relation to the other criteria for heritage significance under the NSW State Heritage Criteria i.e. Criterion a), b), c), d), e) and g); and
4. There are existing legislative and planning protection mechanisms that would be better suited to seeking protection of the on-site trees from the impacts of this proposed development, if this is the underlying goal for Hornsby Shire Council.
5. The proposal relied upon data from secondary sources that did not establish any heritage significance, and without having direct access to the site for thorough evaluation of the trees.



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